it has been so held.[13] The admiralty doctrine of jettison seems based on this ground.[14] And the old books say that a man fleeing from attack may cross another's close with impunity.[15] A recent decision raises this question, it is believed, for the first time in this country. While sailing with his family the plaintiff was forced by a storm to moor to the defendant's dock to save his boat and the people in it from destruction. The defendant cast off the boat, with the result that it was wrecked and the plaintiff injured. The court, in overruling the defendant's demurrer, held that the plaintiff's trespass was excused by its necessity. *Ploof* v. *Putnam*, 71 Atl. 188 (Vt.). Stress of weather has been held sufficient necessity to justify a breach of the Embargo Act.[16] The decision therefore seems correct and in accord with authority. Whether, though the entry is excusable, an action at the suit of the landowner will lie for any damage done is a point upon which there is as yet no authority.[17]

MERGER OF ESTATES HELD IN DIFFERENT RIGHTS. — Merger is the process by which one estate is destroyed through union with another estate in the same land. For one estate to be thus "drowned" by another these conditions at least are admittedly essential: the two estates must come into the same ownership; the second must be the next vested estate in succession; and the second must in legal contemplation be at least as large as the first.[1] On the question whether to these requisites there must be added, as a fourth, that the two estates be held in the same right, there has been an extraordinary variety of opinion.[2]

In an early case it seems to have been suggested that the mere fact of the estates being in different rights could never prevent merger;[3] but this has never been followed,[4] and later discussion has been concerned with the conditions under which such estates could merge, if at all. Another early decision declared that a term in *autre droit* would merge in a reversion in proper right acquired by feoffment, but not in an estate passed by bargain and sale.[5] This distinction, however, has been overlooked in later cases and, it is submitted, not unfortunately. The foundation of merger is metaphysical — the medieval lawyer felt a logical incongruity in one man being lord and tenant of the same estate, or in an estate continuing its independent existence, when in the same hands as one in immediate succession that in the eye of the law includes it.[6] It is clear that neither incongruity can be increased or diminished by the formal or informal character of the process by which unity of possession is achieved. Still another solution was reached by Lord Coke, who declared that if the subsequent estate be

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13 Mouse's Case, 12 Rep. 63. See Respublica *v.* Sparhawk, *supra*.
14 See Abbott, Shipping, 14 ed., 753-757; Price *v.* Hartshorn, 44 N. Y. 94.
15 6 Bacon Abr., Trespass, 674. But *cf.* Gilbert *v.* Stone, Aleyn 35.
16 The Brig William Gray, 1 Paine 16.
17 See 3 HARV. L. REV. 189, 204; Terry, Principles of Anglo-American Law, § 425.

1 Challis, Real Property, 2 ed., 76.
2 The cases on the merger of estates held in different rights have generally involved either the coalescence in the same hand of an executor's term and a reversion in the owner's personal right, or of an estate in the right of a wife and an estate in the husband's own right.
3 See Lee's Case, 3 Leon. 110.
4 Bracebridge *v.* Cook, Plowd. 417.
5 Downing *v.* Seymour, Cro. Eliz. 911.
6 See 3 Preston, Conveyancing, 3 ed., 15 *et seq.*

in the proper right of the holder there will be no merger; but that a prior estate in the holder's own right must merge in a reversion in *autre droit*.[7] Although it seems as improper to draw a distinction from the sequence of estates as from the process of conveyance, Coke's theory has received some notice from the courts.[8] But there is a clear decision against it.[9]

Numerous early decisions[10] and probably the majority of modern writers[11] lay down the rule that if the estates come into the same hand by act of the parties, merger ensues; if the accession is by act of law, the two estates continue their independent existences. The general American doctrine[12] and the principle of some English *obiter* declarations[13] is that merger is impossible in the case of estates held in different rights. A recent holding that a husband's purchase of the reversion expectant on his wife's term will not work a merger, even at common law, is in accord with these cases. *Hurley* v. *Hurley*, 42 Ir. L. T. 253 (Ire., Ct. App., Nov. 16, 1908). The conclusion reached seems on principle correct, the argument of the text-writers for merger in the case of estates united by act of the parties being in several respects open to objection. To say that the parties intend a merger is to argue in a circle; they intend merely the reasonably apparent consequences of their act. Where there is a well-settled conflict as to whether merger ensues, there is no reason for supposing that in fact it is intended. Indeed, the mere bringing of suit by the holder of the merged estate shows that it is only the acquiring party who intends the destruction of the prior estate. Nor can it be admitted that the foundation of merger is intention; certainly the theory on which a term for hundreds of years is drowned in a shorter reversionary term is not that the holder[14] intends the result. On general grounds of legal policy it seems desirable that the technical and metaphysical principle of merger be, as far as possible, limited in the modern law.

RECENT CASES.

ADVERSE POSSESSION — WHO MAY GAIN TITLE BY ADVERSE POSSESSION — TENANT HOLDING FOR DEFINITE TERM. — A leased land to B for a term of twelve years. Shortly afterwards A made an invalid gift of the land to C, and B, at A's direction, attorned and paid rent to C. C's actual possession was for less than the statutory period, but, coupled with that of B, it made up the time required by the statute. *Held*, that the possession of B cannot be adverse to A, and therefore the statute does not run in C's favor during the existence of the term. *Acharath Bappan* v. *Mathummal Chovi*, 4 Madras L. T. 327.

It is generally held in this country that if a tenant at will, or from year to year, disclaims the title of his landlord, claiming the fee adversely in himself or for a third person, and this disclaimer is brought to the notice of the landlord, the tenancy is forfeited and the statutory period begins to run. *Willison* v.

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[7] Co. Lit. 338 b.
[8] See Nurse *v.* Yerworth, 3 Swanst. 608, 618.
[9] Lichden *v.* Winsmore, 1 Rolle Abr. 934.
[10] 4 Leon. 37 (CII); Carter *v.* Lowe, Owen 56.
[11] See especially, 3 Preston, Conveyancing, 3 ed., 273 *et seq.*
[12] See Little *v.* Bowen, 76 Va. 724.
[13] See Yong *v.* Radford, Hob. 3.
[14] Hughes *v.* Robotham, Cro. Eliz. 302.